

# Human Rights Standards for Conservation

## PART II

### Which International Standards Apply to Conservation Initiatives?

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Harry Jonas, Dilys Roe and Athene Dilke

Discussion Paper

November 2014

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**Biodiversity**

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Natural Justice: Lawyers for Communities and the Environment is a non-profit organisation, registered in South Africa since 2007. Through its offices in Cape Town, New York, Bangalore and Kota Kinabalu, Natural Justice works at the local level to support Indigenous peoples and local communities, provide advice at the national level and engage in international processes, such as meeting of the Convention on Biological Diversity.

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This paper identifies the wide range of international instruments, CBD decisions, and IUCN resolutions and recommendations, that contain provisions relevant to upholding the rights of Indigenous Peoples and local communities in a conservation context. Over 30 broad categories of rights are identified. It forms Part II of a series of three papers that aims to serve as a foundation for developing an accessible *Guide to Human Rights Standards for Conservation*.

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# Foreword

In 2013 Natural Justice published the second edition of *The Living Convention*,<sup>1</sup> – the first compilation of the full extent of international law relevant to Indigenous and Tribal Peoples and local communities. It sets out the specific provisions of relevant international instruments in an integrated compendium, so that – for example – all provisions from across the full spectrum of international agreements that deal with ‘free, prior and informed consent’ are grouped under the same heading.

Building on its earlier engagement in the Conservation Initiative on Human Rights,<sup>2</sup> the International Institute for Environment and Development (IIED) is working with Natural Justice and an advisory group of Indigenous People’s lawyers, and other lawyers and practitioners, to further develop *The Living Convention*. The intention is to provide a clear articulation of the minimum human rights standards for stakeholders working in the context of protected areas and other effective area-based conservation measures – as described in Aichi Biodiversity Target 11. Like *The Living Convention*, this approach is based on existing international law and policy.

The first publication in the series – *To Which Conservation Actors do International Standards Apply?* – provides an analysis of the relevance of human rights standards to the following conservation actors:

- Governments and their agencies,
- International organizations,
- Businesses, and
- Non-governmental organizations, including private foundations.

This (second) publication provides an analysis of the relevant law and policy standards by presenting research on: a) relevant provisions in international legal instruments, b) decisions of the Conference of the Parties to the Convention on Biological Diversity, and c) IUCN resolutions.

The third publication in the series – *Which Redress Mechanisms are Available to Peoples and Communities Affected by Conservation Initiatives?* – provides a review of existing judicial and non-judicial, non-state-based redress mechanisms that are available to Indigenous Peoples and local communities alleging infringement of their rights.

Together, the overall findings of these publications will be presented at the World Parks Congress (Sydney, November 2014) and will form the basis of discussions about next steps. It is expected that these will include – at least – the development of a *Guide to Human Rights Standards for Conservation*, focusing specifically on conservation measures as articulated in Aichi Target 11.

We are extremely grateful to the members of the Technical Advisory Group for their comments on initial drafts of this paper and welcome further inputs from all interested parties as we prepare to discuss this work at the World Parks Congress.

Dilys Roe and Harry Jonas, 1 November 2014

# Summary

Indigenous Peoples and local communities have fought hard for the rights that they have secured at the international level. However, one problem faced by conservation actors in trying to understand these rights – and consequently respect and uphold them – is that they are enshrined in a very wide range of international

instruments. This includes both human rights instruments and environmental instruments, and in both 'hard' (binding) and 'soft' (non-binding) legislation (Box 1). These instruments contain a wide range of provisions relevant to upholding Indigenous Peoples' and local communities' rights in a conservation context.

## BOX 1: INTERNATIONAL INSTRUMENTS WITH HUMAN RIGHTS IMPLICATIONS IN A CONSERVATION CONTEXT

1. Universal Declaration of Human Rights (UDHR)
2. ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries
3. United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP)
4. International Covenant on Civil and Political Rights (ICCPR)
5. International Covenant on Economic, Social and Cultural Rights (ICESCR)
6. International Convention of the Elimination of All Forms of Racial Discrimination (CERD)
7. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
8. Convention on the Rights of the Child
9. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
10. Convention on Biological Diversity (CBD), including:
  - a. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization
  - b. Cartagena Protocol on Biosafety
  - c. Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol
  - d. Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities
  - e. Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity
  - f. Akwé: Kon Guidelines
  - g. Strategic Plan for Biodiversity 2010 – 2020 (including the Aichi Biodiversity Targets)
11. United Nations Conference on Environment and Development Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests
12. United Nations Forum on Forests Non-legally Binding Instrument on All Types of Forests
13. Convention on Wetlands of International Importance
14. United Nations Framework Convention on Climate Change
  - a. Cancun Agreements
15. United Nations Convention to Combat Desertification
16. The International Treaty on Plant Genetic Resources for Food and Agriculture
17. Global Plan of Action for Animal Genetic Resources and the Interlaken Declaration on Animal Genetic Resources
18. FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security
19. FAO Voluntary Guidelines on the Tenure of Land Fisheries and Forests in the Context of National Food Security (FAO Tenure Guidelines)
20. Convention on the Law of the Non-navigational Uses of International Watercourses
21. The Agreement on Trade-Related Aspects of Intellectual Property Rights
22. Convention Concerning the Protection of the World Cultural and Natural Heritage
23. Convention on the Protection and Promotion of the Diversity of Cultural Expressions
24. Convention for the Safeguarding of the Intangible Cultural Heritage
25. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

## Diverse Provisions, Diverse Rights

Over 30 broad categories of rights can be identified which can be affected by conservation interventions including substantive individual and collective rights (e.g. overarching human rights, Indigenous Peoples' rights, cultural traditions etc.), land, and natural resource rights, and procedural rights (e.g. free prior and informed consent, access to information etc.).

The links to conservation are obvious for some categories of rights – such as land tenure rights. But other categories of rights are also important for conservation actors to be aware of. For example, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) states that:

*Indigenous Peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.*

Conservation interventions that prevent access to traditional medicines – through for example, the establishment of a protected area that allows no human use – is a clear violation of this right. For each of these broad categories there is a wide range of provisions in which they are enshrined and an even wider range of specific rights that are conferred.

## Spotlight on Conservation Instruments

Beyond human rights law, some key international conservation instruments include specific provisions relevant to Indigenous Peoples and local communities. The Convention on Biological Diversity (CBD) is the overarching international policy framework for international conservation and it makes explicit reference to the rights and needs of Indigenous People and local communities in relation to biodiversity conservation. A review of the decisions taken since 2004 provides clear evidence that attention to these rights is increasing over time. Furthermore, attention to Indigenous Peoples' and local communities' rights is prevalent *across all of the CBD's thematic programmes and crosscutting issues* from protected areas to agriculture.

Similarly, an analysis of IUCN recommendations and resolutions reveals a changing attitude towards Indigenous Peoples and local communities over the years, from a peripheral (or even a non-) issue to one

that is increasingly at the forefront of the conservation agenda.

## Conclusions

Our analysis points to three core conclusions.

1. There is a wide range of international instruments, CBD decisions and IUCN resolutions and recommendations that reference the rights of Indigenous Peoples and local communities. The relevant rights exist across a broad legal landscape that includes instruments, decisions and resolutions which focus on human rights, cultural heritage, biodiversity, forests, climate change and agriculture, among others.
2. The frequency with which the rights of Indigenous Peoples and local communities are referenced in international law and policy, particularly in CBD decisions and IUCN resolutions, is increasing markedly each year.
3. There now exists a very detailed and situation-specific set of internationally agreed rights of Indigenous Peoples and local communities that should be fully considered by actors involved in conservation initiatives. Distilling this huge body of international law, policy and practice is of utmost importance if conservation actors are to play their part in respecting human rights in the areas in which they work.

## Join the debate

The second stage of the Human Rights Standards for Conservation Initiative will focus on distilling from the immense body of international law described in this document the standards to which conservation initiatives, implementers and funders should be expected to adhere. We would greatly appreciate your inputs to this debate. To start this discussion we welcome your feedback on our analysis.

- Do you agree with the broad categories of rights that we have identified? Are there any missing?
- Do you agree that 'soft law' such as that provided in IUCN resolutions and FAO voluntary guidelines should be included in a set of minimum standards?
- How can we provide guidance to conservation actors on how to abide by these standards?

# Introduction

1

Conserving the world's biodiversity involves making decisions about land use and management practices across a range of landscapes and seascapes. In many cases these areas are owned, used and managed by Indigenous Peoples or local communities who farm, fish, collect forest resources or graze their livestock. The practice of conservation by external actors can therefore have significant implications for the rights and livelihoods of Indigenous Peoples and local communities, either positive or negative, depending on how the initiatives are implemented and the degree to which the actors involved respect – or do not respect – their rights.

Indigenous Peoples have fought hard for the rights they have secured at the national and international level. Decades of commitment, tenacity, personal sacrifices, and well-executed negotiating strategies have led to important rights gains and legal recognition, perhaps most significantly with the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. In addition to this landmark instrument, Indigenous Peoples have also engaged in a wide range of international negotiations and processes to secure rights in many other instruments such as the Convention on Biological Diversity (CBD).

Local communities have also successfully advocated for the development of a significant body of rights relating to their role in protecting and conserving biological diversity.<sup>3</sup> Legal recognition of the rights of Indigenous Peoples and local communities continues to grow as new instruments are negotiated and adopted, as progressive jurisprudence is developed through regional and national courts, and as countries enact laws that respect the rights of peoples and communities.<sup>4</sup> Yet despite the existence of this extensive and growing body of law, conservation conflicts still occur (see Appendix 1 of our synthesis Research Report for details of current and recent 'conservation conflicts' available at [pubs.iied.org/14644IIED](http://pubs.iied.org/14644IIED)).

Perhaps one reason relates to the fact that Indigenous Peoples' and local communities' rights are enshrined in a very wide range of international instruments including both human rights instruments and environmental instruments, and in both 'hard' (binding) and 'soft' (non-binding) legislation. There is no single repository of information about this body of law, which in turn negatively impacts the level of knowledge of conservation actors about Indigenous Peoples' and local communities' rights and practices. *The Living Convention*<sup>5</sup> was a preliminary attempt to develop a comprehensive compendium of all provisions from international instruments relevant to the rights of Indigenous Peoples and local communities, with a focus on land, natural resources and traditional knowledge, among other things. This publication re-focuses and deepens that analysis on rights relevant to conservation.

In this context, a recently developed guide provides a clear overview of the core rights of Indigenous Peoples in Mesoamerica.<sup>6</sup> Another contemporary publication provides a descriptive overview of the rights of Indigenous Peoples and local communities across a range of international instruments.<sup>7</sup>

This paper advances those contributions in three areas. First, it explores the wide array of international instruments in which provisions relevant to Indigenous Peoples and local communities appear, and identifies the broad categories of rights included in those provisions. The research is presented in Supporting Document 1 available at [pubs.iied.org/G03847.html](http://pubs.iied.org/G03847.html).

Second, to demonstrate the groundswell of international governmental consensus on the rights of Indigenous Peoples and local communities, this paper explores the CBD – as the overarching international policy framework for biodiversity conservation – and evaluates the trends relating to the number of times the term “indigenous and local communities”<sup>8</sup> is referenced in decisions of the Conferences of Parties (COPs) since 2004.<sup>9</sup> While the binding nature of CBD decisions is a question of academic debate,<sup>10</sup> they represent a consensus opinion of the majority of parties to the CBD and thus can be considered as representative of a normative trend in international law. The detailed analysis of CBD decisions is presented in Supporting Document 2 available at [pubs.iied.org/G03848.html](http://pubs.iied.org/G03848.html).

Third, since the majority of conservation organisations are members of the International Union for the Conservation of Nature (IUCN), the paper reviews the evolution of references to the rights of Indigenous Peoples and local communities within the resolutions passed at the General Assemblies and World Conservation Congresses.<sup>11</sup> These resolutions represent obligations to the members and reflect a majority opinion of the membership. The detailed analysis of IUCN resolutions and recommendations is presented in Supporting Document 3 available at [pubs.iied.org/G03849.html](http://pubs.iied.org/G03849.html).

This document *does not* synthesise the body of law described above. This is because the task of condensing the law to elaborate which specific standards are most relevant to conservation initiatives should be a multi-stakeholder endeavour. In this light, it is anticipated that this paper, coupled with the associated papers described in the Foreword on a) the relevance of standards to conservation actors and b) redress mechanisms, will provide the basis for a multi-stakeholder initiative to deepen and advance this work. It is felt that this undertaking is central to ensuring that future conservation initiatives are compliant with the existing body of international law and policy and uphold the human rights standards that are enshrined therein.



# International Instruments

2

## 2.1 The Breadth of Relevant International Instruments

The following areas of international law and policy were exhaustively researched for any references to the substantive and procedural rights of individuals, communities and peoples as they relate to territories and other social-ecological systems (broadly defined):

- Human rights, including instruments focusing on Indigenous Peoples;
- Cultural heritage;
- Spiritual and religious integrity;
- Education and languages;
- Development;
- Biodiversity and nature;
- Climate change;
- Desertification;
- Wetlands;
- Endangered species;
- Forests;
- Intellectual property;
- Land;
- Water;
- Food sovereignty; and
- Agriculture.

In deciding which instruments to include in the review, the key criterion used referred to whether the instrument was negotiated through an intergovernmental process, and therefore confers a degree of legal obligation on state agencies and other actors involved in conservation initiatives. Thus, in addition to international instruments such as the CBD, we included, for example, subsidiary agreements negotiated in the context of the CBD such as the Tkarihwaí:ri Code of Ethical Conduct, the Akwé: Kon Guidelines, as well as instruments negotiated under the auspices of the Food and Agriculture Organization, including the Voluntary Guidelines on the Tenure of Land Fisheries and Forests in the Context of National Food Security.

UN sustainable development declarations are critically important statements of international consensus on the issues, but because of the large volume of relevant provisions, they were not included in this analysis. These include: the Stockholm Declaration (1972), the Rio Declaration on Environment and Development (1992), Agenda 21 (1992), the outcome document of Rio+20 (*The Future We Want*, 2012), and the Outcome Document of the World Conference on Indigenous

Peoples (2014). It is felt that these should be duly considered in the next phase of the work.

We excluded the following declarations, policies and court judgements because they were either not negotiated through an intergovernmental process or apply only to specific institutions, regions or cases:

- Indigenous Peoples' declarations such as the (Rio+20) Indigenous Peoples International Declaration on Self-Determination and Sustainable Development.
- Operational policies and guidance documents of multilateral development banks and financial institutions such as the World Bank.
- International and regional conventions and judgements relevant to Indigenous Peoples and local communities.

Although the authors are aware of the critical developments and interpretations of non-treaty law relating to Indigenous Peoples' rights, we also excluded decisions or reports from the following bodies or individuals that do not involve multilateral decision-making. These include:

- UN Permanent Forum on Indigenous Issues;
- The Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples;
- Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples; and
- Other relevant Special Rapporteurs such as those on Adequate Housing, on Right to Food, on Cultural Rights, on Minority Issues, on Human Rights Defenders, and on Human Rights of Internally Displaced Persons.

These institutions, individuals and their outputs do, however, represent integral elements of an evolving political and legal landscape and we recommend these should be reviewed in the next phase of the initiative.

Overall, we reviewed an extremely diverse set of instruments, extending far beyond those that are most regularly cited in literature on conservation and human rights, such as ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and the CBD. Appendix 1 provides a summary listing of all the international instruments that were reviewed, and all those that were subsequently drawn upon to inform this paper are presented in Box 1.

## BOX 1: RELEVANT INTERNATIONAL INSTRUMENTS INCLUDED IN THIS REVIEW

1. Universal Declaration of Human Rights (UDHR)
2. ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries
3. United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP)
4. International Covenant on Civil and Political Rights (ICCPR)
5. International Covenant on Economic, Social and Cultural Rights (ICESCR)
6. International Convention of the Elimination of All Forms of Racial Discrimination (CERD)
7. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
8. Convention on the Rights of the Child
9. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
10. Convention on Biological Diversity (CBD), including:
  - a. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization
  - b. Cartagena Protocol on Biosafety
  - c. Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol
  - d. Tkarhwaïé:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities
  - e. Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity
  - f. Akwé: Kon Guidelines
  - g. Strategic Plan for Biodiversity 2010 – 2020 (including the Aichi Biodiversity Targets)
11. United Nations Conference on Environment and Development Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests
12. United Nations Forum on Forests Non-legally Binding Instrument on All Types of Forests
13. Convention on Wetlands of International Importance (Ramsar Convention)
14. United Nations Framework Convention on Climate Change (UNFCCC)
  - a. Cancun Agreements
15. United Nations Convention to Combat Desertification (UNCCD)
16. The International Treaty on Plant Genetic Resources for Food and Agriculture
17. Global Plan of Action for Animal Genetic Resources and the Interlaken Declaration on Animal Genetic Resources
18. FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security
19. FAO Voluntary Guidelines on the Tenure of Land Fisheries and Forests in the Context of National Food Security (FAO Tenure Guidelines)
20. Convention on the Law of the Non-navigational Uses of International Watercourses
21. The Agreement on Trade-Related Aspects of Intellectual Property Rights
22. Convention Concerning the Protection of the World Cultural and Natural Heritage (UNESCO World Heritage Convention)
23. Convention on the Protection and Promotion of the Diversity of Cultural Expressions
24. Convention for the Safeguarding of the Intangible Cultural Heritage
25. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

## 2.2 The Range of Relevant Provisions

The international instruments identified above contain a wide range of provisions relevant to upholding Indigenous Peoples' and local communities' rights in a conservation context. The links to conservation are obvious for some instruments and provisions, based on the nature of the international instrument and the wording of the provision. For example, Article 10(c) of the CBD calls on states to "protect and encourage the customary use of biological resources [by Indigenous Peoples and local communities]<sup>12</sup> in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements."

But conservation interventions, such as the establishment of protected areas, can infringe on a much wider set of rights than those highlighted in the CBD. Conservation initiatives have – in the past and present – led to the forced evictions of peoples and communities from their territories, or from areas they have traditionally accessed, which "constitutes a gross violation of human rights."<sup>13</sup> It also violates a range of specific rights such as rights to the integrity of governance systems, culture, traditional knowledge, and health. For example, the UN Declaration on the Rights of Indigenous Peoples states that:

*Indigenous Peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.*<sup>14</sup>

The establishment of a protected area that excludes Indigenous Peoples or local communities from their territories or areas they traditionally access is a clear violation of this right.<sup>15</sup> In this light, our review of international instruments identified 32 broad categories under which Indigenous Peoples and local communities have specific rights, namely:

### Substantive individual and collective rights

- Overarching human rights;
- Women;
- Children;
- Indigenous Peoples (collective rights);<sup>16</sup>
- Traditional governance systems and customary laws;

- Cultural, spiritual and religious integrity;
- Assimilation;
- Cultural traditions;
- Diversity of cultural expressions;
- Knowledge, innovations and practices;
- Education and languages;
- Development;
- Cultural and natural heritage.

### Substantive land, and natural resource rights

- Land tenure;
- Stewardship, governance, management, and use of territories, lands and natural resources;
- Customary use;
- Sustainable use;
- Equitable conservation of biodiversity;
- Protected areas;
- Sacred natural sites;
- Food and agriculture;
- Water;
- Climate change;
- Forests;
- Desertification.

### Procedural Rights

- Benefit sharing;
- Precautionary approach;
- Free, prior and informed consent;
- Cultural, environmental and social impact assessments;
- Information, decision making and access to justice; and
- Capacity building and awareness.<sup>17</sup>

Provisions from a range of instruments populate each category, as illustrated in Table 1, which emphasises the magnitude of the task involved in distilling out key standards from these provisions.

**Table 1: Key Categories of Indigenous Peoples and Local Communities Rights Affirmed in International Instruments**

CATEGORY	INSTRUMENTS
Overarching human rights	UDHR, ICCPR, ICESCR, UNDRIP, Charter of the United Nations, ICCPR, CERD); FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO Tenure Guidelines); UN Declaration on the Right to Development; and UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
Women's rights	CEDAW
Children's rights	Convention on the Rights of the Child
Indigenous Peoples' rights	UNDRIP and ILO Convention 169
Traditional governance systems and customary laws	UNDRIP and ILO Convention 169
Cultural, spiritual and religious integrity	UNDRIP, ILO Convention 169; UDHR; ICCPR; ICESCR; Declaration on the Rights of Minorities; and Convention on the Rights of the Child
No forced assimilation	UNDRIP and Convention on the Rights of the Child
Cultural traditions	UNDRIP; Declaration on the Rights of Minorities; and CERD
Diversity of cultural expressions	Convention on Cultural Expressions
Knowledge, innovations and practices	ILO Convention 169; UNDRIP; CBD; Aichi Biodiversity Target 18. Akwé: Kon Voluntary guidelines; Bonn Guidelines; UNCED Forest Principles; UNFF Instrument on Forests
Education and languages	UNDRIP and ILO Convention 169; Declaration on the Rights of Minorities; ICESCR; UNFF Instrument on Forests Provision; and CERD
Development	ILO Convention No. 169; UNDRIP; Declaration on the Right to Development; and Convention on Cultural Expressions
Cultural and natural heritage	UNDRIP; World Heritage Convention; Convention on Intangible Cultural Heritage; UNESCO Universal Declaration on Cultural Diversity

Focusing the analysis further, Box 2 illustrates the abridged body of law that relates to one particular category of right, namely 'cultural, spiritual and religious integrity'. A close reading of the relevant provisions

highlights how this bundle of rights is enshrined across a range of international instruments and how an exclusionary conservation initiative could lead to its violation.

## BOX 2: CULTURAL, SPIRITUAL AND RELIGIOUS INTEGRITY

Indigenous Peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.<sup>18</sup>

Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.<sup>19</sup>

Indigenous Peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.<sup>20</sup>

In applying the provisions of this Part of the ILO Convention No. 169 governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.<sup>21</sup>

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.<sup>22</sup>

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.<sup>23</sup>

States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.<sup>24</sup>

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.<sup>25</sup>

In conclusion, conservation actors should not only ensure they do not infringe the wide spectrum of Indigenous Peoples' and local communities' rights through ill-conceived or badly implemented conservation initiatives, but actively seek to achieve the recognition of the rights of Indigenous Peoples and local communities. This includes rights, understood and applied in an inseparable and interrelated manner, which are each enshrined in international instruments.

# CBD Decisions

3

The CBD provides the overarching international policy framework for conservation and hence it is considered in detail here. The three aims of the CBD are the conservation and sustainable use of biodiversity and the sharing of benefits arising from the use of genetic resources. The governing body of the CBD is the Conference of the Parties (COP), which meets every two years to review progress, identify new priorities, and make any necessary amendments to the Convention. The COP advances implementation of the Convention through the decisions it takes at its meetings, which in turn are based on recommendations from its various subsidiary bodies.

The Convention itself contains explicit provisions on the rights and needs of Indigenous Peoples and local communities in relation to biodiversity conservation. A review of the decisions taken since 2004 provides clear evidence that the rights of Indigenous Peoples and local communities are increasingly recognised by state parties. While the binding nature of CBD decisions is a matter of academic debate,<sup>26</sup> they represent a consensus opinion of the majority of parties to the CBD and thus can be considered as representative of the international community's historical and current stance and standards on a range of issues relating to the conservation and sustainable use and biodiversity, and associated benefit sharing. Taken together, they can also be interpreted as patterns of practice that illustrate the normative trajectory of this area of international law.<sup>27</sup>

### 3.1 The Breadth and Depth of Recognition, Respect and Support for Rights

Protected areas are a common type of conservation intervention dealt with in detail by the CBD. For example, in Decision VII/28, the COP established a multi-year Programme of Work on Protected Areas (PoWPA). Element 2 of PoWPA focuses on governance, participation, equity and benefit sharing. It calls on state parties to achieve two goals, namely: establish mechanisms for the equitable sharing of both costs and benefits arising from the establishment and management of protected areas; and ensure full and effective participation of Indigenous Peoples and local communities in the management of existing, and the establishment and management of new, protected areas. Towards the first goal, for example, parties are requested to promote equity and benefit sharing through the following activities:

- Assess the economic and socio-cultural costs, benefits and impacts arising from the establishment and maintenance of protected areas, particularly for Indigenous Peoples and local communities, and adjust policies to avoid and mitigate negative

impacts, and where appropriate compensate costs and equitably share benefits in accordance with the national legislation.

- Recognise and promote a broad set of protected area governance types related to their potential for achieving biodiversity conservation goals in accordance with the Convention, which may include areas conserved by Indigenous Peoples and local communities and private nature reserves. The promotion of these areas should be by legal and/or policy, financial and community mechanisms.
- Establish policies and institutional mechanisms with full participation of Indigenous Peoples and local communities, to facilitate the legal recognition and effective management of Indigenous Peoples and local community conserved areas in a manner consistent with the goals of conserving both biodiversity and the knowledge, innovations and practices of Indigenous Peoples and local communities.
- Use social and economic benefits generated by protected areas for poverty reduction, consistent with protected-area management objectives.
- Engage Indigenous Peoples and local communities and relevant stakeholders in participatory planning and governance, recalling the principles of the ecosystem approach.
- Establish or strengthen national policies to deal with access to genetic resources within protected areas and fair and equitable sharing of benefits arising from their utilisation, drawing upon the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization as appropriate.

Beyond protected areas, the CBD also deals with a range of other forms of conservation and sustainable use of biodiversity. To assess one measure of how seriously parties to the CBD take the rights of Indigenous Peoples and local communities across its programme of work, a review was undertaken of all COP decisions since 2004 to review the frequency of references to “Indigenous and local communities”, and related rights (such as “prior and informed consent”) and issues (such as traditional beliefs, customs and practices). The analysis highlights that parties affirm a wide range of rights and related considerations across the CBD’s thematic programmes and crosscutting issues. This includes recognition, respect and support for:

- Areas of social and cultural importance;
- Appropriate information in an accessible language;
- Beliefs, customs, practices and social behaviour;
- Community-based approach(es) to land, water and resource management;



- Cultural, social and environmental impact assessments in specific situations (Akwé: Kon Voluntary Guidelines); cultural diversity; and culturally appropriate approaches;
- Customary laws and traditions;
- Adoption of the “ecosystem approach”;<sup>26</sup>
- Empowerment of Indigenous Peoples and local communities, including women;
- Fair and equitable sharing and distribution of benefits;
- Full, effective or active participation or involvement in relevant decisions;
- Indigenous livelihoods and access to resources; Indigenous Peoples and local communities as custodians of biological diversity; pastoralists and transhumant Indigenous Peoples; and small-scale and artisanal livelihoods;
- Knowledge, innovations and practices of Indigenous Peoples and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, including of natural and cultural landscapes;
- Lands and waters traditionally occupied or used;
- Local needs and products or skills;
- Natural and cultural heritage and values;
- Poverty and hunger alleviation, eradication and elimination;
- “Prior informed consent” over a larger range of decisions that affect Indigenous Peoples and local communities;
- Sacred sites and species; and
- Traditional guardianship or custodianship.

Table 2 illustrates the increasing attention to Indigenous Peoples’ and local communities’ rights paid by parties to the CBD as evidenced by the increasing percentage of CBD decisions that reference “Indigenous and local communities.”

Questions remain about whether the fullest extent of the rights of Indigenous Peoples and local communities is reflected in CBD decisions and whether parties properly implement CBD decisions. Yet there is no doubt that the CBD provides specific guidance to parties about the need to fully consider the rights of Indigenous Peoples and local communities in the context of protected areas as well as with regard to the conservation and sustainable use of biodiversity – and related sharing of benefits – across all of its programmes.

**Table 2: Percentage of decisions that reference “indigenous and local communities”**

	COP 7	COP 8	COP 9	COP 10	COP 11
Indigenous and local communities	48.4%	58.8%	63.9%	66%	72.7%

# IUCN Resolutions and Recommendations

# 4

The IUCN has not always considered the rights of Indigenous Peoples and local communities as being central to its mission. However, our analysis of General Assembly and Conservation Congress resolutions and recommendations shows that over the years its attitude to Indigenous Peoples and local communities has changed significantly, from being seen as a peripheral (or even a non-) issue to one that is increasingly at the forefront of the agenda of its various meetings and clearly articulated in its public statements.

Our research shows that local communities were first considered by IUCN in 1958 when the General Assembly recommended that greater emphasis be placed on “instruct[ing] local communities to understand and actually carry out sound methods of conservation...”.<sup>29</sup> Specific attention to Indigenous Peoples and local community rights was then highlighted in 1975 when the General Assembly recommended, among other things:

1. That governments maintain and encourage traditional methods of living and customs which enable communities, both rural and urban, to live in harmony with their environment;
2. That educational systems be orientated to emphasise environmental and ecological principles and conservation objectives derived from local cultures and traditions, and that these principles and objectives be given wide publicity;
3. That governments devise means by which Indigenous Peoples may bring their lands into conservation areas without relinquishing their ownership, use, or tenure rights;
4. That the governments of countries still inhabited by people belonging to separate indigenous cultures recognise the rights of these people to live on the lands they have traditionally occupied, and take account of their view points;
5. That in the creation of national parks or reserves Indigenous Peoples should not normally be displaced from their traditional lands, nor should such reserves anywhere be proclaimed without adequate consultation with the Indigenous Peoples most likely to be directly affected by such proclamation; and
6. That existing natural values be respected and integrated in the early planning stage of every urban or industrial development scheme, this requiring that ecological principles be taken as the basis for all planning.

By 2000, IUCN's thinking on rights had evolved to the extent that the IUCN Council adopted a Policy on Social Equity in Conservation and Sustainable Use of Natural Resources, which sets out six major areas in which issues of social equity should be explicitly addressed.<sup>30</sup> The Vth World Parks Congress in 2003 led to the Durban Accord and Action Plan, which expressly voices concern that “many places conserved over the ages by local communities, mobile and Indigenous Peoples are not given recognition, protection and support.” That Congress heralded a ‘new paradigm’ for protected areas based on a “commitment to involve local communities, indigenous and mobile peoples in the creation, proclamation and management of protected areas.”<sup>31</sup>

In 2007, the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which underscores Indigenous Peoples' right to self-determination and contains very clear language of relevance to conservation initiatives. Subsequently, at the IVth IUCN World Conservation Congress (2008), Resolution 4.52 “Implementing the UN Declaration on the Rights of Indigenous Peoples” recognised that “the UN *Declaration* is the accepted international mechanism for relieving the tremendous pressures and crises faced by Indigenous Peoples throughout the world as they endeavor to protect indigenous ecosystems, including biological, cultural and linguistic diversity.” It makes very specific endorsements, calls, directions, acknowledgements, invitations and requests with regard to the full range of actors involved in conservation initiatives (Box 3).

### BOX 3: IUCN WORLD CONSERVATION CONGRESS RESOLUTION 4.052

The IUCN World Conservation Congress at its 4th Session in Barcelona, Spain, 5-14 October:

**Endorsed** the United Nations Declaration on the Rights of Indigenous Peoples;

Called on all IUCN members to endorse or adopt the UN Declaration, and to apply it in their relevant activities;

**Directed** the IUCN Council to form a task force to examine the application of the Declaration to every aspect of the IUCN Programme (including Commission Mandates), policies and practices and to make recommendations for its implementation;

**Acknowledged** that injustices to Indigenous Peoples have been and continue to be caused in the name of conservation of nature and natural resources;

**Invited** international organizations to provide all appropriate financial and other capacity-building measures to ensure participation by Indigenous Peoples and their communities in sustainable development;

**Instructed** the Director General and Commissions to identify and propose mechanisms to address and redress the effects of historic and current injustices against Indigenous Peoples in the name of conservation of nature and natural resources; and

**Requested** that the Director General make Indigenous Peoples' role in conserving biological and cultural diversity a main concern of IUCN and future World Conservation Congresses, and present a statement of progress to the annual UN Permanent Forum on Indigenous Issues beginning in April 2009.

At the same Congress, Resolution 4.056 proposed a "Rights-based Approach to Conservation" that includes guidance to state and non-state actors "planning or engaged in policies, projects, programmes or activities with implications for nature conservation", set out in Box 4. The Resolution was followed by a number of publications on the same topic to provide guidance and examples to conservation-related stakeholders.<sup>32</sup>

### BOX 4: IUCN WORLD CONSERVATION CONGRESS RESOLUTION 4.056

Resolution 4.056 on "Rights-based Approach to Conservation," lists the following principles concerning human rights in conservation in its Annex (prepared by the IUCN Environmental Law Centre):

1. Promote the *obligation of all state and non-state actors* planning or engaged in policies, projects, programmes or activities with implications for nature conservation, to secure for all potentially affected persons and peoples, the substantive and procedural rights that are guaranteed by national and international law (emphasis added).
2. Ensure prior evaluation of the scope of conservation policies, projects, programmes or activities, so that all links between human rights and the environment are identified, and all potentially affected persons are informed and consulted.
3. Ensure that planning and implementation of conservation policies and actions reflect such prior evaluation, are based on reasoned decisions and therefore do not harm the vulnerable, but support as much as possible the fulfilment of their rights in the context of nature and natural resource use.
4. Incorporate guidelines and tools in project and programme planning to ensure monitoring and evaluation of all interventions and their implications for human rights of the people involved or potentially affected which will support better accountability and start a feedback loop.
5. Support improvement of governance frameworks on matters regarding the legal and policy frameworks, institutions and procedures that can secure the rights of local people in the context of conservation and sustainable resource use.

In reference to the first publication of this series – *To Which Conservation Actors do International Standards Apply?* – it is interesting to note that Resolution 4.056 clearly states that it is the obligation of "all state and non-state actors" involved in conservation initiatives to "secure for all potentially affected persons and peoples, the substantive and procedural rights that are guaranteed by national and international law".<sup>33</sup>

At the Vth World Conservation Congress in 2012, IUCN adopted its Global Programme for 2013-2016, which focuses explicitly on rights-based conservation as one of three global results the Programme is aiming to

achieve.<sup>34</sup> It also adopted a new Policy on Conservation and Human Rights for Sustainable Development (contained in Resolution 5.099 – Box 5), which sets out a framework for rights-related foundations of social equity and justice.

## BOX 5: IUCN WORLD CONSERVATION CONGRESS RESOLUTION 5.099

Resolution 5.099 adopts the Policy on Conservation and Human Rights for Sustainable Development which calls on IUCN to be guided by a number of principles, including:

1. Respect, protect, promote and fulfil all procedural and substantive rights, including environmental and customary rights, for just and equitable conservation.
2. Promote the implementation of the provisions of international conventions and policy processes which respect human rights in all approaches to conservation, whether multilateral environmental agreements such as the Convention on Biological Diversity or human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) [...].
3. Take into account the multiple recommendations of the Vth World Parks Congress and the 2003 WCPA Durban Action Plan which refer to rights and which IUCN has endorsed concerning protected areas, including the acknowledgement of rights to the restitution of lands taken without free, prior and informed consent and the right to full and effective participation in protected area governance and management, in particular the targets under the Durban Action Plan's Outcome 5 ['The rights of Indigenous Peoples, including mobile indigenous peoples, and local communities are secured in relation to natural resources and biodiversity conservation'].
4. Ensure that IUCN programmes, projects, and activities undertaken, sponsored or supported by the IUCN, are assessed using international human rights standards. Such measures should include social, environmental, and human rights impact assessments prior to any project implementation.

Most recently, IUCN made an intervention during Roundtable 1 of the World Conference on Indigenous Peoples (WCIP) that discussed "UN system Action for the Implementation of the Rights of Indigenous Peoples."<sup>35</sup> The statement highlights paragraphs 34

to 36 of the Outcome Document that reaffirms and recognises the significant contribution of Indigenous Peoples to the promotion of sustainable development<sup>36</sup> and ecosystem management, including their associated knowledge.<sup>37</sup>

IUCN's statement continues:

*IUCN applies and actively promotes a rights-based approach in its conservation work. IUCN endorsed the United Nations Declaration on the Rights of Indigenous Peoples, and applies principles, standards of practice, approaches and tools that support its implementation in the context of nature conservation. It is of particular importance to IUCN the implementation of Article 29.1 of the Declaration, which affirms the right of Indigenous Peoples "to the conservation and protection of the environment and the productive capacity of their lands, territories and resources." According to the Declaration, any action in this regard must not only obtain the free, prior and informed consent of Indigenous Peoples, but should also be part of their right to self-determination and to determine priorities for management of their territories. IUCN will continue to work together with UN agencies, indigenous organizations, governments and civil society for implementation of this and other provisions of UNDRIP and the Outcome Document.*

IUCN also made an intervention in Roundtable 3 of the World Conference on Indigenous Peoples (WCIP) entitled "Indigenous Peoples' Lands, Territories and Resources." IUCN welcomed commitments made by States to "recognize, promote and adjudicate the rights of Indigenous Peoples pertaining to lands, territories and resources"<sup>38</sup>, but expressed regret that the General Assembly had not addressed this issue more "emphatically" and called upon states to take all the necessary measures to fulfil those commitments as soon as possible. In this context, it stated: "In terms of rights to lands, territories and resources, there is indeed a large gap between statements and concrete actions."<sup>39</sup>

It then made the following important statement:

*The implementation of Article 29.1 of the Declaration, which affirms the right of Indigenous Peoples "to the conservation and protection of the environment and the productive capacity of their lands, territories*

*and resources”, is of great importance not only for Indigenous Peoples but for everyone on the planet. It is well known that indigenous territories contain a wealth of biodiversity and provide environmental benefits of global value. However, the fundamental precondition for the objectives of this article to be met is the recognition, respect and guarantee of the rights of Indigenous Peoples to their lands, territories and resources. This is the basis for fulfilling other rights contained in the Declaration, particularly the rights of Indigenous Peoples to self-determination and to determine priorities for their territories. The most effective way to achieve conservation and environmental protection of Indigenous Peoples’ environments is to secure and protect their rights and support their own forms of conservation and land management.*

IUCN then underscored the central tenet of this work on ‘Human Rights Standards for Conservation’, that: “policies and actions to protect the environment, including biodiversity conservation and climate change mitigation and adaptation actions should not be used as justification or pretext to affect in any way the rights of Indigenous Peoples to their lands, territories and resources or to not recognize and secure them.” It undertook to “support the implementation of specific measures to ensure that State commitments are fulfilled in relation to the rights to lands, territories and resources of Indigenous Peoples, within our areas of competence and working in close collaboration with UN agencies, indigenous organizations and relevant stakeholders in government and civil society.”

Reviewing IUCN’s approach to Indigenous People and local communities since 1958, it is clear that IUCN has evolved from “instruct[ing] local communities to understand and actually carry out sound methods of conservation...”<sup>40</sup> to expressing a much more nuanced approach to both Indigenous Peoples and local communities. It is also making increasingly public and clear statements on rights the rights of Indigenous Peoples and local communities and the corresponding obligations of “UN agencies, [...] and relevant stakeholders in government and civil society.”

## 4.1 The Breadth and Depth of Recognition, Respect and Support for the Rights

Similar to the review of international instruments and CBD decisions, our review of all IUCN

resolutions highlights the diversity of rights and related considerations that parties affirm in the IUCN resolutions. These include recognition, respect and support for a wide range of issues that are directly referenced in IUCN resolutions:

- Indigenous Peoples, local communities and other historically marginalised groups;
- Article 8(j) of the CBD; and Akwe:Kon Voluntary Guidelines;
- Ancestral, Indigenous and local knowledge, innovation and practices;
- Ancestral, Indigenous and traditional land tenure systems;
- Indigenous, traditional and local community-based approaches to land and natural resource governance and management;
- Cultural, linguistic and spiritual heritage, practices and values;
- Customary rights, institutions and regulations;
- Health, cultural, social and environmental impacts;
- Equity;
- Local development aspirations, including poverty reduction and food sovereignty and security;
- Free, prior and informed consent; participation and involvement of local people; and
- Gender/sex as a cross-cutting issue.

Table 3 illustrates the percentage of resolutions or recommendations that reference “Indigenous Peoples” or “local communities” for each World Conservation Congress.

**Table 3: Percentage of resolutions and recommendations that reference “Indigenous Peoples” or “local communities” per Conservation Congress**

WCC 2000 (Amman)	WCC 2004 (Bangkok)	WCC 2008 (Barcelona)	WCC 2012 (Jeju)
6.1%	10.2%	14.7%	21.3%

The analysis highlights the fact that an increasing number of IUCN resolutions are referencing the rights of Indigenous Peoples and local communities, and the manner in which they are being engaged is deepening and evolving from mere references to fully dedicated resolutions.

# Conclusions

5

This publication – together with the three Supporting Documents, which detail the relevant provisions from international law, CBD decisions and IUCN resolutions – supports three core conclusions. First, there is a wide range of international instruments, CBD decisions and IUCN resolutions and recommendations that reference the rights of Indigenous Peoples and local communities. The rights exist across a legal landscape that includes instruments that focus on human rights, cultural heritage, biodiversity, forests, climate change and agriculture, among others. Second, the rights of Indigenous Peoples and local communities are referenced in international law and policy, particularly in CBD decisions and IUCN resolutions with increasing frequency. For example, the percentage of CBD decisions that include references to the phrase “indigenous and local communities” increased from 48 per cent in 2004 (COP 7) to 72 per cent in 2012 (COP 11). Third, there now exists a very detailed and situation-specific set of internationally agreed rights of Indigenous Peoples and local communities that should be fully considered by actors involved in conservation initiatives.

Notwithstanding these facts, it remains the case that the body of rights is not yet easily accessible to actors involved in conservation initiatives. Looking ahead, it is suggested that a multi-stakeholder group draw upon the three discussion papers produced as part of this initiative on Human Rights Standards for Conservation to collaboratively elaborate a clearly accessible set of standards and provide guidance to all rights- and stakeholders involved in conservation.

## Join the debate

The second stage of the Human Rights Standards for Conservation Initiative will focus on distilling from the immense body of international law described in this document the standards to which conservation initiatives, implementers and funders should be expected to adhere. We would greatly appreciate your inputs to this debate. To start this discussion we welcome your feedback on our analysis.

- Do you agree with the broad categories of rights that we have identified? Are there any missing?
- Do you agree that ‘soft law’ such as that provided in IUCN resolutions and FAO voluntary guidelines should be included in a set of minimum standards?
- How can we provide guidance to conservation actors on how to abide by these standards?



## Appendix 1: Instruments, Guidelines and Decisions Reviewed

INCLUDED OR NOT	NAME OF INSTRUMENT, GUIDELINES etc.	YEAR
<b>HUMAN RIGHTS</b>		
✓	Universal Declaration of Human Rights	1948
✓	ILO Convention No. 169	1989, 1991 <sup>44</sup>
✓	United Nations Declaration of the Rights of Indigenous Peoples	2007
✓	International Covenant on Civil and Political Rights	1966, 1976
✓	International Covenant on Economic, Social and Cultural Rights	1966, 1976
✓	International Convention of the Elimination of All Forms of Racial Discrimination	1965,1969
✓	Convention on the Elimination of All Forms of Discrimination against Women	1979, 1981
✗	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1984, 1987
✓	Convention on the Rights of the Child	1989, 1990
✓	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities	1992
<b>Regional Charters and Conventions on Human Rights</b>		
✗	African Charter on Human and Peoples' Rights	1981, 1986
✗	Arab Charter on Human Rights	1994, new version adopted 2004
✗	Asian Human Rights Charter	Declared 1998
✗	European Convention on Human Rights	1950, 1953
✗	American Convention on Human Rights	1969, 1978

United Nations General Assembly and Subsidiary Bodies		
x	<p>Selection of United Nations General Assembly Resolutions<sup>45</sup> and General Comments that are not listed above, including:</p> <ul style="list-style-type: none"> <li>▪ A/RES/67/153 on Indigenous Peoples Rights</li> <li>▪ A/RES/208 on Culture and Development</li> <li>▪ A/RES/66/142 on Rights of Indigenous Peoples</li> <li>▪ A/RES/66/154 on Human Rights and Cultural Diversity</li> <li>▪ A/RES/66/204 on Harmony with Nature</li> <li>▪ A/RES/66/296 on Organization of the High-level Plenary Meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples</li> <li>▪ A/RES/65/198 on Indigenous Issues</li> <li>▪ A/RES/65/166 on Culture and Development</li> <li>▪ A/RES/65/164 on Harmony with Nature</li> <li>▪ A/RES/65/161 on Convention on Biological Diversity</li> <li>▪ A/RES/65/120 on The role of the United Nations in promoting a new global human order<sup>46</sup></li> </ul>	(Only those between 2010/2013)
x	Reports of the United Nations Permanent Forum on Indigenous Issues	Established 2000
x	Reports of the Expert Mechanism on the Rights of Indigenous Peoples	Established 2007
x	United Nations Human Rights Council Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework	2011
x	World Conference on Indigenous Peoples, Outcome Document	2014
United Nations Special Rapporteurs and Independent Experts		
x	Reports of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the right to Non-discrimination in this Context	Established 2000
x	Reports of the Special Rapporteur on the Right to Food	Established 2000
x	Reports of the Special Rapporteur on the Situation of Human Rights Defenders	Established 2000
x	Reports of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples	Established 2001

x	Reports of the Independent Expert on Minority Issues	Established 2005
x	Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation	Established 2008
x	Reports of the Special Rapporteur in the Field of Cultural Rights	Established 2009
x	Reports of the Special Rapporteur of Internally Displaced Persons	Established 2010 (Representative operating since 1994)
<b>BIODIVERSITY</b>		
<b>Convention on Biological Diversity</b>		
✓	Convention on Biological Diversity	1992, 1993
✓	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization	2010
✓	Cartagena Protocol on Biosafety	2000, 2003
✓	Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol	2010
✓	Tkarihwaïé:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities	2010
✓	Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity	2004
✓	Akwé: Kon Guidelines	2004
✓	Aichi Biodiversity Targets (Decision X/2)	2010
x	Consolidated Update of the Global Strategy for Plant Conservation 2011-2020 (Decision X/17)	2010
x	Protected areas (Decision X/31)	2010
x	Sustainable use of biodiversity (Decision X/32)	2010
x	Biodiversity and climate change (Decision X/33)	2010

x	Multi-year programme of work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity (Decision X/43)	2010
x	Programme of Work on Protected Areas	2004
x	Select CBD COP Decisions that are not listed above, including: <ul style="list-style-type: none"> <li>▪ Article 8(j) and Related Provisions (Decision V/16)</li> <li>▪ Article 8(j) and Related Provisions (Decision VI/10)</li> <li>▪ Protected Areas (Articles 8(a) to (e)) (Decision VII/28)</li> <li>▪ Protected Areas (Decision VIII/24)</li> <li>▪ Article 8(j) and Related Provisions (Decision IX/13)</li> <li>▪ Protected Areas (Decision IX/18)</li> <li>▪ Access and Benefit Sharing (Decision X/1)</li> <li>▪ Strategic Plan 2011-2012 (Decision X/2)</li> <li>▪ Protected Areas (Decision X/31)</li> <li>▪ Article 8(j) and Related Provisions (Decisions X/40-43)</li> <li>▪ Article 8(j) and Related Provisions (Decision XI/14)</li> <li>▪ Protected Areas (Decision XI/24)</li> <li>▪ Sustainable Use of Biodiversity (Decision XI/25)</li> </ul>	
<b>Forests</b>		
✓	United Nations Conference on Environment and Development Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests	1992
x	FAO Responsible Management of Planted Forests: Voluntary Guidelines	2006
x	FAO Fire Management: Voluntary Guidelines. Principles and Strategic Actions	2006
✓	United Nations Forum on Forests Non-legally Binding Instrument on All Types of Forests	2007
<b>Other Agreements</b>		
x	International Plant Protection Convention	1951
✓	Convention on Wetlands of International Importance	1971, 1975

x	Convention on the International Trade in Endangered Species of Wild Fauna and Flora	1973, 1975 (Amended 1979)
x	Convention on the Conservation of Migratory Species of Wild Animals	1979, 1983
<b>IUCN Resolutions and Recommendations from World Conservation Congresses and the Fifth World Parks Congress</b>		
x	First World Conservation Congress	1996
x	Second World Conservation Congress	2000
x	Third World Conservation Congress	2004
x	Fourth World Conservation Congress	2008
x	Fifth World Conservation Congress	2012
x	Fifth World Parks Congress	2003
<b>POLLUTION</b>		
x	The Montreal Protocol on Substances that Deplete the Ozone Layer	1987, 1989
x	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	1989, 1992
x	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	1998, 2004
<b>CLIMATE CHANGE</b>		
✓	United Nations Framework Convention on Climate Change	1992, 1994
x	Kyoto Protocol to the United Nations Framework Convention on Climate Change	1997, 2005
✓	UNFCCC Cancun Agreements	2010
<b>DESERTIFICATION</b>		
✓	United Nations Convention to Combat Desertification	1994, 1996

<b>FOOD AND AGRICULTURE</b>		
x	United Nations Fish Stocks Agreement	1995
x	FAO Code of Conduct on Responsible Fisheries	1995
✓	The International Treaty on Plant Genetic Resources for Food and Agriculture	2001, 2004
x	ILO's Work in Fishing Convention	2007
✓	Global Plan of Action for Animal Genetic Resources and the Interlaken Declaration on Animal Genetic Resources	2007
<b>Food and Agriculture Organization</b>		
x	FAO Code of Conduct on Responsible Fisheries	1995
✓	FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security	2004
✓	FAO Voluntary Guidelines on the Tenure of Land Fisheries and Forests in the Context of National Food Security	2012
x	FAO International Guidelines for Securing Sustainable Small-scale Fisheries	2012 (Zero Draft)
<b>WATER</b>		
✓	Convention on the Law of the Non-navigational Uses of International Watercourses	1997
<b>INTELLECTUAL PROPERTY</b>		
✓	The Agreement on Trade-Related Aspects of Intellectual Property Rights <sup>47</sup>	
x	On-going WIPO negotiations on Effective Protection of Traditional Knowledge, Traditional Cultural Expressions/ Folklore and Genetic Resources	
<b>CULTURAL HERITAGE</b>		
✓	UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage	1972

✓	UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions	2005, 2007
✓	UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage	2003, 2006
<b>BIOCULTURAL DIVERSITY</b>		
✗	Declaration on Biocultural Diversity	2010
✗	UNESCO-CBD Joint Programme of work on the Links between Biological and Cultural Diversity (referenced in Decision X/20)	2010
<b>SUSTAINABLE DEVELOPMENT</b>		
✗	Declaration of the United Nations Conference on the Human Environment	1972
✗	United Nations Declaration on the Right to Development	1986
✗	Rio Declaration on Environment and Development	1992
✗	Agenda 21	1992
✗	Programme for the Further Implementation of Agenda 21	1997
✗	Plan of Implementation of the World Summit on Sustainable Development (Johannesburg Declaration on Sustainable Development and the Plan of Implementation) of the World Summit on Sustainable Development	2002
✗	United Nations Programme of Action on the Sustainable Development of Small Island Developing States	1994
✗	Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of SIDS (2005)	2005
✗	The Future We Want	2012
<b>INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE</b>		
✓	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters	1998

# Notes

- 1 <http://naturaljustice.org/library/our-publications/legal-research-resources>
- 2 <https://community.iucn.org/cihr/Pages/default.aspx>
- 3 Reference to 'local communities' throughout the text infers: "local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity" (Article 8j of the Convention on Biological Diversity). This issue is further discussed in Part I.
- 4 See Technical Document I for further discussion about the distinction between Indigenous Peoples' tribal communities and local communities' rights.
- 5 Jonas H. D., J. E. Makagon, and H. Shrumm, 2013. *The Living Convention: A Compendium of Internationally Recognized Rights that Support the Integrity and Resilience of Indigenous Peoples' and Local Communities' Territories and other Social-ecological Systems*. Natural Justice: South Africa and Malaysia. Second edition.
- 6 Crippa L., and C. Foley (Forthcoming). Guide on Conservation and Indigenous Peoples in Mesoamerica. Indigenous Law Resource Centre and IUCN: Washington D.C. and Gland.
- 7 Jonas, H. D., J. E. Makagon, S. Booker, and H. Shrumm, 2012. *An Analysis of International Law and Jurisprudence as Relating to Territories and Areas Conserved by Indigenous Peoples and Local Communities*. Natural Justice and Kalpavriksh: Bangalore and Pune.
- 8 The 12<sup>th</sup> Conference of the Parties to the Convention on Biological Diversity will decide whether to refer to "Indigenous Peoples and local communities" forthwith.
- 9 Details of this research are found in the Supporting Document 1 which is available on the IIED website at: [pubs.iied.org/G03847.html](http://pubs.iied.org/G03847.html)
- 10 Jonas H. D., J. E. Makagon, and H. Shrumm, 2013.
- 11 See Supporting Document 2 on the IIED website at [pubs.iied.org/G03848.html](http://pubs.iied.org/G03848.html)
- 12 This term has been used by the CBD since it was adopted in 1992. At the twelfth COP in October 2014, the COP adopted Decision UNEP/CBD/COP/12/L.26, wherein the Parties decided "to use the terminology "Indigenous Peoples and local communities" in future decisions and secondary documents under the Convention, as appropriate..."
- 13 Commission on Human Rights Resolution 1993/77 para. 1.
- 14 UNDRIP Article 24(1).
- 15 See for example the community protocol of the Traditional Healers of Bushbuckridge who complain of a) overharvesting of medicinal plants from communal areas and b) exclusion from protected areas in Mpumalanga province, South Africa: [www.community-protocols.org](http://www.community-protocols.org)
- 16 While most other categories include provisions relevant to Indigenous Peoples, this category lists provisions dealing specifically with Indigenous Peoples as peoples.
- 17 We note that this list is a mixture of "rights" such as "no forced assimilation" and broader categories such as "climate change" under which Indigenous People and local communities have certain related rights. Importantly, the categorization is not intended to crystallize any particular view of the law, but one approach that may help conservation actors to begin to engage with the law. Moreover, conservation actors should always consult the actual instruments.
- 18 UNDRIP Article 12(1). Notably, the asterisk communicates the fact that this provision is only applicable to Indigenous Peoples.
- 19 UNDRIP Article 25.
- 20 UNDRIP Article 34.
- 21 ILO Convention No. 169 Article 13(1).
- 22 UDHR Article 27(1).
- 23 ICCPR Article 27.
- 24 Declaration on the Rights of Minorities Article 1.
- 25 ICCPR Article 18.
- 26 Jonas H. D., J. E. Makagon, and H. Shrumm, 2013.
- 27 Jutta Brunee, COPing With Consent, 15 *Leiden Journal of International Law* 1, 34, 40 (2002), noting that the ability of COPs "to facilitate the emergence of genuine shared understandings is enhanced by the fact that various technical or legal dialogues occurring in subsidiary bodies of the COP feed into its activities and may become mutually reinforcing".
- 28 The "ecosystem approach" is a strategy for the integrated management of land, water and



- living resources that promotes conservation and sustainable use in an equitable way. Despite its name, it explicitly recognizes that humans, with their cultural diversity, are an integral component of ecosystem. See: <http://www.cbd.int/ecosystem/>
- 29 Resolution 005, General Assembly, Athens, 1958.
- 30 Policy on Social Equity in Conservation and Sustainable Use of Natural Resources: [https://cmsdata.iucn.org/downloads/sp\\_equity\\_policy.pdf](https://cmsdata.iucn.org/downloads/sp_equity_policy.pdf) The six areas are: 1. Social Diversity and Equity; 2. Gender and Equity; 3. Tenure and Participatory Management; 4. Indigenous and Traditional Peoples; 5. Security and Equity; 6. Poverty.
- 31 The Durban Accord: <http://cmsdata.iucn.org/downloads/durbanaccord.pdf>. Moreover, recent findings indicate that policies safeguarding local populations' sustainable use of the forest reserves were not only effective, but on average, even more so than strictly protected areas that focused exclusively on conservation. The findings further indicated that most effective of all were indigenous areas, which were estimated to reduce deforestation by approximately 16 percentage points over the period of 2000-2008. See World Bank, 'New Study Finds Indigenous Areas Highly Effective at Reducing Tropical Deforestation' (16 August 2011). The study compared indigenous areas with strictly protected areas, such as national parks. The report is available at: <<http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0022722>> accessed 2 February 2014.
- 32 Greiber, Thomas (Ed.) 2009. Conservation with Justice. A Rights-based Approach. IUCN, Gland, Switzerland. Campese, J., Sunderland, T., Greiber, T. and Oviedo, G. (eds.) 2009 Rights-based approaches: Exploring issues and opportunities for conservation. CIFOR and IUCN. Bogor, Indonesia.
- 33 This point has been made before in IUCN. For example, Recommendation 046 on 'Marine and coastal Area Conservation', agreed in 1994, calls upon: "governments, international agencies and the non-governmental community [...] to encourage coastal nations, where indigenous and traditional use of the sea is to be affected, to include indigenous and local people as partners in the discussions and in any substantial steps involving planning, development, management and maintenance of these areas".
- 34 IUCN 2013-2016 Programme: [https://cmsdata.iucn.org/downloads/iucn\\_programme\\_2013\\_2016.pdf](https://cmsdata.iucn.org/downloads/iucn_programme_2013_2016.pdf)
- 35 22 September 2014.
- 36 WCIP Outcome Document, Paragraph 34.
- 37 WCIP Outcome Document, Paragraph 35. The knowledge referred to includes: "knowledge acquired through experience in hunting, gathering, fishing, pastoralism and agriculture, as well as their sciences, technologies and cultures."
- 38 WCIP Outcome Document, Paragraph 21.
- 39 WCIP, Roundtable 3 of the World Conference on Indigenous Peoples (WCIP): "Indigenous Peoples' lands, territories and resources" on 23 September. General Assembly Hall, New York.
- 40 Resolution 005, General Assembly, Athens, 1958.
- 41 To illustrate the depth of nuance with which IUCN is engaging these groups, the following are terms used in resolutions: aborigines and aboriginal peoples; Amazonian Indians and Amazonian indigenous territories; community identity; disenfranchised peoples; groups and communities which are frequently marginalized; Indigenous Peoples in voluntary isolation/initial contact; Indigenous Peoples and populations and local communities and their organizations; traditional peoples; and traditional ways of life and lifestyles; Inuit people; Native Amerindians and other native groups; nomadic peoples; minorities; mobile Indigenous Peoples; mobile pastoralists and mobile peoples and mobile peoples; peasants; vulnerable groups; rural communities and rural traditions and areas; sedentary peoples; stewardship and stewards, tribes and tribal people; and societies, cultures and history of Indigenous Peoples;
- 42 Similarly, the following terms have been used in this context: Community-based approaches, agricultural practices, natural resource management; community-conserved areas and community conservation; community resource management and community resource use; Indigenous Conservation Territories; Indigenous Peoples' and Community Conserved Territories and Areas; customary territories and areas; local conservation; locally-controlled conservation and management regimes; local cultures/traditions; local people; local specialists; sacred sites; traditional conservation systems; traditional community-based management systems; sites of major environmental, social or cultural significance; and voluntarily conservation;
- 43 "Indigenous Peoples/local communities" is a search term in the IUCN database of resolutions.
- 44 Unless otherwise indicated, when two years are provided, the first indicates the year adopted and the second indicates the year of entry into force. Where there is only one year provided that is the year of adoption.

- 45 It is important to note that “[w]hile the decisions of the General Assembly have no legally binding force for Governments, they carry the weight of world opinion on major international issues, as well as the moral authority of the world community.” Available via: <http://www.un.org/ga/57/about.htm>.
- 46 For a full list please consult <http://www.un.org/documents/resga.htm>.
- 47 Many developing countries have been required to go beyond the requirements of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) when signing trade agreements with the United States and European Union. These have been called “TRIPS-Plus Provisions.”



This paper identifies the wide range of international instruments, CBD decisions, and IUCN resolutions and recommendations, that contain provisions relevant to upholding the rights of Indigenous Peoples and local communities in a conservation context. Over 30 broad categories of rights are identified. It forms Part II of a series of three papers that aims to serve as a foundation for developing an accessible *Guide to Human Rights Standards for Conservation*.

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